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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 William A. Graven,

10 Plaintiff,

11 v.

12 Mark Brnovich, et al.,

13 Defendants.
14

No. CV-22-00062-PHX-GMS

ORDER

15
16 Before the Court are William A. Graven (“Plaintiff”)’s three Motions for Extension
17 of Time (Docs. 37, 39, 44) to file responses to Defendants’¹ pending motions to dismiss
18 Plaintiff’s complaint (Docs. 33, 34). Also before the Court is Defendants’ Motion for
19 Summary Disposition of Defendants’ Motions to Dismiss (Doc. 47), and Plaintiff’s Motion
20 for Extension of Time to file a response to the motion (Doc. 54). Plaintiff has also filed a
21 Notice of Interlocutory Appeal (Doc. 45), and several motions seeking miscellaneous relief
22 (Docs. 48, 50). For the following reasons, Plaintiff’s interlocutory appeal is certified as
23 frivolous, Plaintiff is granted a ten-day extension to file a response to the pending motions
24 to dismiss, and Defendants’ motion is denied.
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26 ¹ Of the eleven Defendants in this action, ten are sued for acts allegedly committed while
27 serving in the Arizona Attorney General’s Office: Mark Brnovich, Michael Bailey, Don
28 Conrad, Paul Ahler, Joe Waters, Lisa Rodriguez, Mark Perkovich, Zora Manjencich,
Jennifer Perkins, and John Lopez (“State Defendants”). The State Defendants filed one
motion to dismiss, (Doc. 33), and Defendant Mark Dangerfield filed a separate motion,
(Doc. 34).

1 **I. Frivolous Appeal**

2 Ordinarily, “the filing of a notice of interlocutory appeal divests the district court of
3 jurisdiction over the particular issues involved in that appeal.” *City of Los Angeles, Harbor*
4 *Div. v. Santa Monica Baykeeper*, 254 F.3d 882, 886 (9th Cir. 2001). However, if the district
5 court finds that the interlocutory appeal is “frivolous,” it “may certify, in writing, that [the
6 plaintiff] has forfeited their right” to appeal and may proceed with the litigation. *Chuman*
7 *v. Wright*, 960 F.2d 104, 105 (9th Cir. 1992) (adopting rule for interlocutory appeals of
8 denials of qualified immunity); *see also Nascimento v. Dummer*, 508 F.3d 905, 908 (9th
9 Cir. 2007) (“When a Notice of Appeal is defective in that it refers to a non-appealable
10 interlocutory order, it does not transfer jurisdiction to the appellate court, and so the
11 ordinary rule that the district court cannot act until the mandate has issued on the appeal
12 does not apply.”); *Ruby v. Sec. of Navy*, 365 F.2d 385, 389 (9th Cir. 1966) (“Where the
13 deficiency in a notice of appeal . . . is clear to the district court, it may disregard the
14 purported notice of appeal and proceed with the case, knowing that it has not been deprived
15 of jurisdiction.”). An appeal is frivolous if it is “so baseless that it does not invoke appellate
16 jurisdiction.” *Dagdagan v. City of Vallejo*, 682 F. Supp. 2d 1100, 1116 (E.D. Cal. 2010)
17 (quoting *Schering Corp. v. First DataBank, Inc.*, No. C 07-01142 WHA, 2007 WL
18 1747115, at *3 (N.D. Cal. June 18, 2007)).

19 Plaintiff’s interlocutory appeal does not invoke appellate jurisdiction because it does
20 not seek review of any order by this Court. Instead, Plaintiff requests that the United States
21 Court of Appeals for the Ninth Circuit review his complaint and hold a hearing, all before
22 this Court has had the opportunity to rule on the pending motions to dismiss. 28 U.S.C.
23 § 1291 limits the jurisdiction of the federal courts of appeals to “all final decisions of the
24 district courts of the United States,” and 28 U.S.C. § 1292 permits review of some, but not
25 all, interlocutory orders. *See* 28 U.S.C. §§ 1291, 1292. But sections 1291 and 1292 are
26 clear: For appellate jurisdiction to lie, there must be *some* underlying order for the appellate
27 court to review. *See Link v. Mercedes-Benz of N. Am., Inc.*, 550 F.2d 860, 863 (3d Cir.
28 1977) (“[O]ur jurisdiction extends only to orders of the district court.”). Because Plaintiff’s

1 Notice of Appeal does not identify any order by this Court that is properly reviewable by
 2 the Ninth Circuit, his appeal is frivolous, and the Court retains jurisdiction over the entire
 3 case.² To the extent Defendants' Motion for Summary Disposition seeks a certification
 4 that Plaintiff's appeal is frivolous, it is granted.

5 **II. Motions to Extend**

6 The State Defendants and Defendant Dangerfield separately filed motions to
 7 dismiss Plaintiff's complaint on March 14, 2022. (Docs. 33, 34.) Plaintiff's response to
 8 both motions was due March 28, 2022, but no response was filed. Instead, Plaintiff filed a
 9 Motion for Change of Venue on March 15, (Doc. 36), a Motion to Strike on March 22,
 10 (Doc. 38), a Motion for Hearing on March 24, (Doc. 43), and three motions to extend the
 11 deadline for his responses to the motions to dismiss until after the Court ruled on his
 12 motions. (Docs. 37, 39, 44.) Defendants urge the Court to summarily dismiss Plaintiff's
 13 complaint under LRCiv 7.2(i) because he has failed to timely respond to their motions to
 14 dismiss.

15 Plaintiff's requested relief amounts to staying the briefing on Defendants' motions
 16 to dismiss until the Court rules on motions that Plaintiff filed *after* Defendants' motions.
 17 The Court declines to do so. Nevertheless, Plaintiff is granted an extension to file responses
 18 to both motions to dismiss (Docs. 33, 34). *See Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d
 19 1253, 1259 (9th Cir. 2010). Plaintiff's responses are due ten (10) days from the date of
 20 this order and will be deemed timely filed.³ Defendants may respond in the manner
 21 envisioned by the Local Rules. *See* LRCiv 7.2(d). As the Court will permit Plaintiff to
 22 respond to the pending motions to dismiss, Defendants' Motion for Summary Disposition
 23 is denied to the extent it seeks a ruling from the Court on the motions to dismiss without

24 ² While Plaintiff's Motion for Miscellaneous Relief / Clarification of Various Matters (Doc.
 25 48) and his Emergency Motion for Miscellaneous Relief / Appeal Status (Doc. 50) appear
 26 addressed to the Ninth Circuit, they were filed on this Court's docket. To the extent
 27 Plaintiff wishes their contents to be considered by the Ninth Circuit, they must be filed
 directly with the Ninth Circuit. To the extent Plaintiff seeks clarification from this Court
 as to the status of his interlocutory appeal and his requested extensions of time, this order
 addresses his concerns, and his motions are denied as moot.

28 ³ As to all other outstanding motions, deadlines for filing Responses and Replies are set
 forth in the Local Rules, which govern this action. *See* LRCiv 7.2.

1 hearing from Plaintiff first. Plaintiff's request for an extension of time to respond to
2 Defendants' Motion for Summary Disposition (Doc. 54) is denied as moot.

3 **CONCLUSION**

4 For the foregoing reasons,

5 **IT IS ORDERED** certifying Plaintiff's Interlocutory Appeal (Doc. 45) as **frivolous**
6 for the reasons stated in this Order.

7 **IT IS FURTHER ORDERED** that Plaintiff's Motions for Extension of Time to
8 File Response (Docs. 37, 39, 44) are **GRANTED in part and DENIED in part**. Plaintiff's
9 responses to the pending motions to dismiss are due on **April 18, 2022**.

10 **IT IS FURTHER ORDERED** that Defendants' Motion for Summary Disposition
11 of Defendants' Motions to Dismiss (Doc. 47) is **GRANTED in part and DENIED in**
12 **part**.

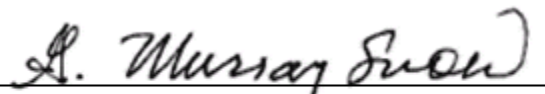
13 **IT IS FURTHER ORDERED** that Plaintiff's Motion for Miscellaneous Relief/
14 Clarification of Various Matters (Doc. 48) is **DENIED** as moot.

15 **IT IS FURTHER ORDERED** that Plaintiff's Emergency Motion for
16 Miscellaneous Relief/Appeal Status (Doc. 50) is **DENIED** as moot.

17 **IT IS FURTHER ORDERED** that Plaintiff's Motion for an Extension of Time to
18 Respond to Appellees' Motion for Summary Disposition (Doc. 54) is **DENIED** as moot.

19 **IT IS FURTHER ORDERED** that Plaintiff shall not file any further motions
20 without prior approval from the Court until the Court rules on all pending motions.
21 Plaintiff shall seek leave of the Court to file any further motion by filing a Request for
22 Permission to File Motion and lodging the proposed motion at the time of filing his
23 Request.

24 Dated this 7th day of April, 2022.

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26 G. Murray Snow
27 Chief United States District Judge
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